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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/732,729	12/11/2000	Katsuei Tanabe	2000-1686A	2321

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05/28/2003

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EXAMINER

MEREK, JOSEPH C

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 05/28/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/732,729

Applicant(s)

TANABE ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10,15,20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 10,15,20 and 23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 20 March 2003 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The final rejection dated 1/20/02 is vacated. Applicant is relieved from any time periods pertaining to that office action.

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 3/20/03 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(f) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of the annular ring in Fig. 7. The disclosure does not support the shape size or location. The corrections to Fig. 6 have not been approved since Fig. 6 shows two different embodiments in the same drawing.

The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 6 show(s) modified forms of construction in the same view. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The substitute specification has not been entered due adding new matter to the disclosure. The proposed changes on page 7, line 1 and lines 4-6. Moreover, proposed Fig. 7 has not been approved and the substitute specification address Fig. 7.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10, 15, 20, and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It has not been adequately disclosed that the exterior shell of the container is held on the container body by both the protrusions and adhesive. The original specification specifically sets forth that the adhesive and the protrusions are used exclusively of each other. Page 6, line 23-30, states that the exterior shell may be fitted on the container body and may be held on the container body by a lightly bonding a smaller end portion thereof with adhesive instead of by engaging the smaller end thereof with the protrusions formed on the outer surface so that the exterior shell can be separated from the container body by applying a small force thereto. On page 7, line 1-6, the specification states that since it is troublesome to put the exterior shell once removed from the container body again on the container body and to bond the smaller end portion lightly again to the container body. Therefore,

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the packaging container shown in Fig. 6 is useful for containing confectionary that is expected to be eaten up all at once. This does not allow for the protrusions to be used with the adhesive. Moreover, the originally filed claims never combined the features.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Zeman (US 3,371,819). Regarding claims 15, 20, and 23, as they are best understood, the adhesive of the instant invention cannot be used with the protrusions. The exterior shell 14 can be inverted and held on the container by the at least one protrusion 18. See Col 2, lines 41-45, where the ring 18 can be discontinuous.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zeman (US 3,371,819) in view of Sequin. Regarding claim 10, as it is best understood, the adhesive of the instant invention cannot be used with the protrusions. Zeman teaches the structure but not the lid for hermetically sealing the container body. Sequin, as seen in Figs. 1-7, teaches a similar cup with a lid for hermetically sealing the container body. It would have been obvious to employ the lid of Sequin in the container of Zeman to protect the contents. The exterior shell 14 can be inverted and held on the container by the at least one protrusion 18.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer in view of Zeman and further in view of Sequin. Regarding claim 10, as it is best understood, the adhesive of the instant invention cannot be used with the protrusions. Zimmer does not teach the at least one protrusion for holding on the sleeve. Zeman as seen in Figs. 1-3, teaches a similar container with protrusion for holding on the shell. It would have been obvious to employ the protrusions of Zeman in the container of Zimmer in to hold the sleeve on the cup instead of the adhesive. The modified container of Zimmer does not teach the lid for hermetically sealing the container body. Sequin, as seen in Figs. 1-7, teaches a similar cup with a lid for hermetically sealing the container body. It would have been obvious to employ the lid of Sequin in the modified container of Zimmer to protect the contents. As seen in Figs. 1-3 of Zeman, the exterior shell 14 can be inverted and held on the container by the at least one protrusion 18 on the modified container of Zimmer.

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Claims 15, 20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer in view of Leto (US 3,908,887). Regarding claims 15, 20, and 23, as they are best understood, the protrusions cannot be used with the adhesive and therefor they are not required. Zimmer teaches using securing a shell inverted on the cup with adhesive where the shell becomes the base but does not teach holding the shell on the cup where the shell is nested on the cup as seen in Fig. 3 of Zimmer. Leto teaches removable securing a member (utensil) to a cup like structure. It would have been obvious to employ the adhesive Leto in the container of Zimmer to hold the shells on the cup until ready for use or to prevent the shell from being separated from the cup.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer in view of Leto (US 3,908,887) and further in view of Sequin. Regarding claim 10, as it is best understood, the protrusions cannot be used with the adhesive and therefor they are not required. Zimmer teaches using securing a shell inverted on the cup with adhesive where the shell becomes the base but does not teach holding the shell on the cup where the shell is nested on the cup as seen in Fig. 3 of Zimmer. Leto teaches removable securing a member (utensil) to a cup like structure. It would have been obvious to employ the adhesive Leto in the container of Zimmer to hold the shells on the cup until ready for use or to prevent the shell from being separated from the cup. The modified container of Zimmer does not teach the lid for hermetically sealing the container body. Sequin, as seen in Figs. 1-7, teaches a similar cup with a lid for hermetically sealing the container body. It would have been obvious to employ the lid of Sequin in the modified container of Zimmer to protect the contents.

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Conclusion

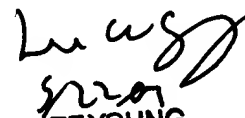
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schafer and Gale are both cited for teaching for holding shells on cups with adhesive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

JCM
May 20, 2003


LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700